

JAN 14 2000

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE)	
)	FINDINGS OF FACT,
PETITIONER,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
VS.)	ORDER
)	
JOHN COATS,)	CAUSE NO. A-1387
)	
RESPONDENT.)	

This matter came on for hearing on the 9th day of November, 1999, before Linda R. Sanchez-Masi, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance ("Director"). The Nebraska Department of Insurance ("Department") was represented by its attorney, Christine M. Neighbors. John Coats ("Respondent") was present and was not represented by an attorney. Witnesses, Beverly Creager, Administrator of the Nebraska Department of Insurance Licensing Division, Bruce Ramage, Department Market Conduct Examination Supervisor, and Marilyn Meier, a Department Market Conduct Examiner, gave testimony. The Rules of Evidence were not requested and the hearing was governed accordingly. The proceedings were tape recorded by Stacey Bellefeuille, a licensed Notary Public. Evidence was introduced, and the matter was taken under advisement. As a result of the hearing, the Hearing Officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed resident insurance agent and broker whose registered business address with the Department is 115 No. 49th Street, Omaha, NE 68132.

2. The Department is the agency of the State of Nebraska charged with licensing insurance agents and brokers.

3. On October 26, 1999, the Department of Insurance filed a petition alleging various violations of Nebraska insurance laws, specifically Neb.Rev.Stat. §44-4028(2) and (11), which authorizes the Director to revoke or suspend any person's license if the Director determines that such person has improperly withheld, misappropriated or converted to his or her own use any money belonging to policyholders, insurers, beneficiaries or others received in the course of business (Neb.Rev.Stat. §44-4028(2)), and/or has not demonstrated trustworthiness and competency to transact business in such a manner as to safeguard the public (Neb.Rev.Stat. §44-4028(11)).

4. The Petition and Notice of Hearing were served upon the Respondent by mailing the same to his address of record by certified mail, return receipt requested. Respondent received the Petition and Notice of Hearing on November 1, 1999, as evidenced by the return receipt card attached to Exhibit #2.

5. Respondent testified that he is the owner of the Dundee Insurance Agency ("Agency") and is responsible for all activities carried out within the agency, as evidenced by Exhibit #17.

6. Beverly Creager, Administrator of the Licensing Division testified that Respondent is a licensed resident agent and that he is also the designated agent of the Dundee Insurance Agency. She continued that as designated agent, he is responsible for all insurance transactions that take place within the agency.

7. Respondent, in his testimony and in his written Opening Statement, as evidenced by Exhibit #17, admits that the allegations as recited in Paragraph #3 "a", "b", "c", and "d" of the

Petition are as stated except for the statement that Respondent converted policyholder funds to his own use.

8. On or about February 12, 1999, Respondent accepted \$325.48 from insured Jackie Bergholz in partial payment on a group liability insurance application, as evidenced by Exhibits #7, #8 and #17.

9. On or about February 16, 1999, Respondent deposited \$325.48 from Ms. Bergholz in the Dundee Insurance Agency bank account and recorded such deposit in the check register, as evidenced by Exhibits #7, #8, and #17.

10. As of April 30, 1999, the \$325.48 Bergholz' payment had not been remitted to the insurance company, as evidenced by Exhibits #12 and #17.

11. On or about February 12, 1999, Respondent accepted \$325.48 from insured Paula Matras in partial payment on a group liability insurance application, as evidenced by Exhibits #7, #9 and #17.

12. On or about February 20, 1999, Respondent deposited the Matras' payment of \$325.48 in the Dundee Insurance Agency bank account and recorded such deposit in the check register, as evidenced by Exhibits #7, #9 and #17.

13. As of April 30, 1999, the \$325.48 Matras' payment had not been remitted to the insurance company, as evidenced by Exhibits #12 and #17.

14. On or about January 25, 1999, Respondent accepted \$325.48 from insureds Arlene F. and James Vickers in partial payment for a group liability insurance application, as evidenced by Exhibits #7, #10 and #17.

15. On or about January 25, 1999, Respondent deposited the Vickers' \$325.48 payment into the Dundee Insurance Agency bank account, as evidenced by Exhibits #7, #10, and #17.

16. As of April 30, 1999, the Vickers' payment had not been remitted to the insurance company, as evidenced by Exhibits #12 and #17.

17. On or about March 6, 1999, Respondent accepted \$325.48 from Barb Welshinger, in partial payment for a group liability insurance policy, as evidenced by Exhibits #7, #11 and #17.

18. On or about March 8, 1999, Respondent deposited the Welshinger payment into the Agency bank account, as evidenced by Exhibits #7, #11, and #17.

19. As of April 30, 1999, the Welshinger's payment had not been remitted to the insurance company, as evidenced by Exhibits #12 and #17.

20. On or about March 31, 1999, including \$9,555.80, an amount which was not due to the insurance company until May 15, 1999, the Dundee Insurance Agency owed EMC Insurance Companies ("EMC") \$99,099.76, as evidenced by Exhibit #5.

21. Exhibit #5 is a Notice of Termination of Appointment sent to Licensing Administrator Beverly Creager by Richard W. Hoffman, General Counsel of EMC Insurance Companies, advising the Department that the Agency Company Agreement with John Coats, dba Dundee Insurance Agency, and EMC Insurance Companies was terminated.

22. Exhibit #5 recites that the appointment of Respondent was terminated due to the non-payment of statement balances owed, representing premiums collected by Respondent and not remitted to EMC.

23. Respondent objected to the receipt of Exhibit #5 into the Record, stating that it

did not apply to the allegations in the Petition. Respondent's objection was noted and is now overruled because EMC companies insured Ms. Bergholz, Ms. Matras, Mr. and Mrs. Vickers and Barb Welshinger as well as others listed in the Petition, and premium amounts of those insureds not remitted to EMC have relevance to amounts owed by Respondent to EMC, and constitute reasons for the EMC termination of Respondent's appointment with EMC.

24. Ms. Creager testified that as Licensing Administrator, one of her responsibilities is to maintain records of current appointments and cancellation of appointments of agents with insurance companies. She continued that after receiving the EMC Notice of Termination of Appointment for John Coats, that the Department recorded his termination of appointment with EMC, and sent a copy of the Notice of Termination of Appointment to the Consumer Affairs Division for further investigation.

25. Respondent was terminated as an EMC agent, due to non-payment of statement balances owed. Such balances represented premiums collected by the Dundee Insurance Agency which were not remitted to EMC, as evidenced by Exhibits #5 and #12.

26. Bruce Ramage, Market Conduct Administrator, testified that his duties and responsibilities include the examination of insurance companies and insurance agencies to determine compliance with Nebraska insurance laws and regulations. Mr. Ramage continued that the EMC Notice of Termination of Appointment was forwarded to him by the Licensing Division and that he began an investigation of Respondent.

27. Mr. Ramage testified that he obtained insurance billing statements to the Dundee Insurance Agency from EMC which showed Respondent owed EMC premium amounts, as evidenced by Exhibit #12.

28. Mr. Ramge testified that he compiled a summary of checks written by Respondent, that were drawn on the Dundee Insurance Agency account that were not related to insurance purposes, as evidenced by Exhibits #6 and #7. The aforementioned checks totaled \$76,205.00, and spanned a seven month period.

29. Exhibit #6 is a summary of checks, compiled by Mr. Ramge, which were drawn on the Dundee Insurance Agency account by Respondent from on or about September 17, 1998, through April 28, 1999. This summary of checks documents checks written to "Cash", to "Harveys" and to "Ameristar" during such period. An amount of \$52,430 was written to "Cash", \$15,575 to "Harveys", and \$8,200 to "Ameristar", as evidenced by Exhibits #6 and #7.

30. Harveys and Ameristar are gambling casinos.

31. Respondent objected to the acceptance of Exhibit #6 into the Record due to relevancy. Respondent's objection was noted and is now overruled, since checks written on the agency business account to "Cash" and to two gambling establishments, compiled in a summary format, is relevant to insurance transaction funds being converted to Respondent's own use.

32. Respondent objected to the acceptance of Exhibit #7 into the Record stating that it was not relevant to the allegations in the Petition. Respondent's objection was noted and is overruled because Exhibit #7 is a check register for transactions made on the Agency account. This register contains recordings of entries of check deposits from policyholders referenced in the Petition, as well as entries of checks written by Respondent on that account.

33. Respondent testified that in late 1998, and January of 1999, he realized that due to the size of the Dundee Insurance Agency that he could no longer manage the Agency and that the Agency expenses were exceeding income. Respondent continued that he fired Rendell Bryant, an agent with the Dundee Insurance Agency, due to several problems pertaining to Mr.

Bryant's handling of claims and transmittal of monies collected from insureds and owed to insurers. Furthermore, Respondent stated that he notified his fidelity insurer that he would have a claim in the \$3,000 to \$5,000 range (see Exhibit #18).

34. Respondent wrote to Farmer's Union Insurance Company on or about February 22, 1999, and requested that Mr. Bryant's agent's appointment be terminated due to Mr. Bryant's improper activities, as evidenced by Exhibit #20.

35. Respondent provided no additional evidence to document Mr. Bryant's insurance transactions.

36. Respondent, as the designated agent, is responsible for any and all transactions of the Dundee Insurance Agency, including insurance transactions carried out by Mr. Bryant.

37. Respondent testified that on or about March 2, 1999, the Dundee Insurance Agency was held up and that \$4,900 to \$5,000 in cash was taken (see Exhibit #18).

38. Respondent testified that on or about April 9, 1999, the Agency was robbed and that \$79 in cash was taken and that he was shot (see Exhibit #18).

39. Respondent offered no evidence to document the robberies.

40. Respondent received, in the course of business, funds belonging to insureds which were owned to insurers, which he converted to his own use, as evidenced by Exhibits #6, #7, #8, #9, #10, #11, #12 and #17.

41. Respondent also testified that there were personal fund withdrawals from the Dundee Insurance Agency account and that there were insufficient funds in that account available to forward to insurance companies.

42. Respondent testified that some of the personal fund withdrawals from the account were for gambling.

43. Respondent testified that he continues to gamble.
44. Respondent stated that as of November 8, 1999, he owed EMC insurance companies \$55,740, as evidenced by Exhibit #19.
45. In the course of transacting the business of insurance Respondent converted funds belonging to insurers to his own use.
46. In converting funds belonging to insurers to his own use, Respondent did not demonstrate trustworthiness and competency to transact business in such a manner as to safeguard the public.
47. On or about January 31, 1999, Respondent submitted a cancellation request on behalf of Deb Winkelman, d/b/a The Stone House, Inc., a daycare center, to Capitol Indemnity Insurance Company ("Capitol Indemnity") requesting that the commercial package be cancelled and rewritten with an effective date of February 25, 1999, as evidenced by Exhibit #13.
48. Marilyn Meier, a Market Conduct Examiner, testified that Capitol Indemnity Insurance Company was no longer writing daycare liability insurance at the time of the cancellation, so a rewritten policy with an effective date of February 25, 1999, could not be reissued.
49. Ms. Meier testified that on or about May 7, 1999, during the Market Conduct Examination, carried out on the premises of the Dundee Insurance Agency, she found the Stone House, Inc., file on Respondent's desk, and that no action had been taken to obtain new coverage for Stone House, Inc. She continued that she notified Associated Underwriters, an agency which had taken over accounts from the Dundee Insurance Agency, to place liability coverage for the daycare.

50. Ms. Meier testified that from the date of cancellation, February 25, 1999, to May 7, 1999, Stone House, Inc., had no daycare liability insurance, as evidenced by Exhibits #13, #14 and #16.

51. Respondent testified that the Stone House, Inc., account was solicited and written by Mr. Bryant, and that Respondent was not aware of problems on the account until after February 25, 1999, when Respondent fired Mr. Bryant (see Exhibit #18).

52. Respondent, as the designated agent of the Dundee Insurance Agency was responsible for all transactions of the Agency, as evidenced by Exhibit 17.

53. Respondent's failure to obtain daycare liability coverage for Stone House, Inc., after submitting a cancellation request to Capitol Indemnity, does not demonstrate trustworthiness and competency to transact business in such a manner as to safeguard the public.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to Neb.Rev.Stat. §44-101.01 and §44-4001 et seq.

2. The Department has personal jurisdiction over Respondent.

3. The Respondent violated Neb.Rev.Stat. §44-4028(2) and (11).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that John Coat's Nebraska insurance agent's and broker's licenses be revoked as of the date the Director of Insurance signs this Order. It is further recommended that Respondent immediately surrender his licenses to the Nebraska Department of Insurance.

Dated this 14th day of January, 2000.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Judith R. Sanchez-Masi
HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance vs. John Coats, Cause No. A-1387.

Dated this 14th day of January, 2000.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

L. Tim Wagner

L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent at Dundee Agency, 115 No. 49th Street, Omaha, NE 68132 and 5116 Capitol Avenue, Omaha, NE 68132, by certified mail, return receipt requested, on this 14th day of January, 2000.

Stacey M. Bullock